

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

M.A.C.M.A. No. 2588 of 2014

Between:

D. Sai Kumar

.....Appellant

AND

Jyothi Transport Service and another

.....Respondents

Date of Judgment pronounced on : 29.01.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A. No. 2588 of 2014**

% 29.01.2018

D. Sai Kumar

.....Appellant

Versus

\$ Jyothi Transport Service and another

..... Respondents.

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> HEAD NOTE:

! Counsel for the Appellant : Sri K. Hari Mohan Redy

^ Counsel for the Respondents : Sri Kota Subba Rao

? Cases referred

¹ 2017 SCC OnLine SC 1270² 2009 (6) ALD 684 (DB)³ (2009) 6 SCC 121⁴ MANU/SC/7680/2008

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 2588 of 2014

JUDGMENT:

This appeal is filed by the appellant-claimant assailing the Order and Decree dated 05.02.2014 passed by the Chairman, Motor Accidents Claims Tribunal, and the Additional Chief Judge, City Civil Court at Hyderabad in O.P.2678 of 2011.

2. Brief facts of the case are that the appellant filed claim petition O.P.2678 of 2011, under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.14,00,000/- towards the injuries sustained by him in a motor vehicle accident that occurred on 09.04.2011 at about 6:15 PM while he was going on his motor cycle bearing number AP-23Q-4293, along with his friend, from Malaysian township to high-tech city and when they reached township gate, one car bearing number AP-28-TV-5166 came from the backside, at a high speed and in a rash and negligent manner, and dashed his motorcycle; as a result of which, he and his friend fell down on the road and he sustained a fracture to both bones of left leg, along with an injury to his head, and other blunt injuries all over his body. He has taken treatment in Remedy Hospital. The Police, KPHB Police Station, registered a case in Crime No.298 of 2011 against the driver of the offending car. The appellant made a claim against the owner and insurer of the offending car. The 1st respondent had remained *ex parte* and the 2nd respondent had filed written statement denying the allegations made in the petition, particularly, the age, income and the manner of the accident, and the injuries sustained by the appellant in the accident. The appellant was put to strict proof of the alleged involvement of the

offending car which caused the accident. It is alleged that the accident has occurred due to the rash and negligent driving of the appellant himself without following the traffic rules. It is further alleged that the claim of the appellant for Rs.14,00,000/-, towards special and general damages as specified under various Heads, is highly excessive. It is further alleged that the first respondent-owner has to furnish the particulars of the insurance policy, date, time and place of accident, and also the particulars of driving license, name of the driver and that it is the duty of the police to forward the claim to the Claims Tribunal having jurisdiction.

3. The Tribunal has framed three issues. Issue No.1 was in respect of rash and negligent driving by the driver of the offending car; issue No.2 with regard to the entitlement of the appellant for compensation, and; issue No.3 on the aspect of the relief thereof. The Tribunal has examined the witnesses PWs.1 to 4 and marked the documents Exhibits A1 to A18 on behalf of appellant, and Exhibits B1 and B2 on behalf of the respondents. On consideration of the evidence, the Tribunal answered the Issue No.1 regarding the rash and negligent driving in favor of the appellant holding that the accident occurred due to the rash and negligent driving by the driver of the offending car. The issues regarding the entitlement of the appellant for compensation and the relief thereof, were answered holding that the appellant is entitled for compensation of Rs.5,75,548/- with interest at the 7% per annum from the date of petition till realization. Aggrieved by the orders passed by the Tribunal, the appellant-claimant is before this Court for enhancement of compensation awarded by the Tribunal.

4. Heard the arguments of the learned counsel for the appellant, and the learned counsel for the respondent-insurance company.

5. Learned counsel for appellant contended that the Tribunal has not awarded just and reasonable compensation entitled by the appellant. He submits that the appellant was 21 years old by the date of accident and he was working as a Marketing Manager in Spectra India Housing Private Ltd., and was drawing a salary of Rs.20,000/- per month. It is contended that the Tribunal has disbelieved the evidence of PW4 and has not considered the documents Exs.A16 to A18. He further contended that the appellant is also entitled for future prospects in view of the judgment of the Hon' ble Apex Court in **National Insurance Company Limited v. Pranay Sethi**¹.

6. The learned counsel for the respondent contended that the Tribunal has rightly considered the evidence of PW4 and the document Ex.B9 and came to the conclusion that the appellant failed to prove that he was drawing salary of Rs.20,000/- per month. It is further argued that the Tribunal has rightly arrived at a conclusion that the appellant was drawing salary of Rs.10,000/- per month, which does not require any interference, as the said finding was based on the appreciation of evidence of PW 4.

7. PW4 is the Marketing Manager of Spectra India Housing Private Limited, Hyderabad. He deposed that the appellant was working as Marketing Manager and was drawing a salary of Rs.20,000/- per month, apart from other incentives fixed by his company depending upon the performance of the appellant. He filed Ex.A16-authorisation letter issued by Mr. K. Ghanshyam, Assistant General Manager of Spectra India Housing Private Limited, authorizing PW4 i.e., Mr. Kuldeep Thakur to give evidence in O.P.No.2678 of 2011 on behalf of the company. Ex.A17

¹ 2017 SCC OnLine SC 1270

is the Salary voucher which shows that the appellant had drawn salary of Rs.20,000/- for the month of March, 2011, and the receipt is dated 07.04.2011. He also filed the application of the appellant showing his educational qualifications, and other additional technical qualifications. The trial Court has disbelieved the evidence of PW4 without giving plausible reasons and also disbelieved the documents Exs.A16 to A18. The Tribunal went wrong in holding that the appellant has not filed any document showing the authorization given by the company to the Assistant General Manager to further delegate his authority. The Tribunal has also observed that the appellant was not trained by their company. It is further observed that PW1 admitted that there is no signature on the offer letter informing the company of his acceptance and Ex.A9-appointment letter does not contain the date on which the appellant was informed or appointed. It is further observed that there is no inward seal on Ex.A18 (resume application of the appellant), and there was no mention of any interview call as per Ex.A9-appointment letter. All these observations of the Tribunal appear to be hyper-technical, without appreciating the evidence before it. PW4 has come before the Tribunal and stated that he was authorized by the Assistant General Manager to depose on behalf of the company. Admittedly, the company in which the appellant was working is a private limited company. A private company may have its own rules and regulations with regard to the appointment and training procedures. It appears that the Tribunal has gone too far evaluating the evidence, without considering the documents before it which are not disproved by any evidence. The Tribunal has also went wrong in holding that the appellant was drawing salary of Rs.9,285/- and there was no basis for arriving at that

figure, except relying on the decision in **B. Ramulamma v. Venkatesh Bus Union, Lingarajapuram, Bangalore and Another**². If there is no evidence on record, then the income of a B.Tec candidate can be presumed. In the instant case, PW4 has come to witness box, filed Exs.A16 to A18, and deposed that the appellant was drawing salary of Rs.20,000/- by the date of accident and, therefore, the findings of the Tribunal with regard to the consideration of the income of the appellant are liable to be set aside. The evidence of PW4, if taken on its face value, and placing reliance on the documents Exs.A16 to A18, the income of the appellant has to be taken into consideration as Rs.20,000/- per month. No doubt, the Tribunal observed that the appellant has not filed any income tax returns to prove his income, but however, he has examined PW4 and filed documents Exs.A16 to A18 to prove his income and, therefore, there is no basis for the Tribunal to disbelieve the proof of income filed by the appellant. However, a person having several educational and technical qualifications and an engineering graduate, would naturally get salary of Rs.15,000/- to Rs.20,000/- ordinarily. Therefore, the evidence of PW4 that the appellant was drawing salary of Rs.20,000/- per month, need not be doubted.

8. The appellant is an engineering graduate. He has got many educational qualifications as seen from Ex.A18. He was working as Marketing Manager in Spectra India Housing Private Limited, by the date of accident. He proved his income by examining PW4, that he was drawing salary of Rs.20,000/-. He suffered three grievous injuries in the accident. He may have also suffered functional disability because of the injuries received in the accident. His future prospects would be affected in view of the injuries suffered by him

² 2009 (6) ALD 684 (DB)

in the accident. The Hon’ble Apex Court in **Pranay Sethi**, in paragraph 64(iv), held as under:

“In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

9. Therefore, taking into consideration the salary of the appellant as Rs.20,000/- per month and, in view of the judgment of the Hon’ ble Apex Court in **Pranay Sethi**, adding 40% of the salary towards future prospects, the total income of the appellant, for the purpose of calculation of compensation, would come to Rs.28,000/- per month. The appellant has suffered 20% permanent disability and, hence, the monthly loss of earnings due to 20% permanent disability would come to Rs.5,600/- per month. The appellant was 21 years old by the date of accident, and therefore, the multiplier applicable as per **Sarla Verma v. Delhi Transport Corporation**³, would be ‘18’. Therefore, the total loss of future earnings due to 20% permanent disability would be Rs.5,600 x 12 x 18, which comes to Rs.12,09,600/-. Therefore, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

S.No	Head	Compensation Awarded by the Tribunal	Compensation enhanced
1.	Grievous injuries	Rs.75,000/-	Rs.75,000/-
2.	Loss of future earnings	Rs.4,01,112/-	Rs.12,09,600/-
3.	Medical expenses	Rs.61,151/-	Rs.61,151/-
4.	Medical estimation for removal of	Rs.25,000/-	Rs.25,000/-

³ (2009) 6 SCC 121

	implants		
5.	Loss of past earnings	Rs.9,285/-	Rs.20,000/-
6.	Extra nourishment	Rs.2,000/-	Rs.2,000/-
7.	Transport and hospitalization	Rs.2,000/-	Rs.2,000/-
	Total	Rs.5,75,548/-	Rs.13,94,751/-

10. **IN THE RESULT**, the appeal is partly allowed by awarding compensation of Rs.13,94,751/- with interest at 7.5% per annum from the date of petition till realization, in the light of the judgment of Hon’ble Supreme Court in **Dharampal and others Vs. U.P. State Road Transport Corporation**⁴. The respondents are directed to deposit the amount of compensation within two months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. No costs. Miscellaneous petitions, if any pending, shall stand closed.



GUDISEVA SHYAM PRASAD, J

29th January, 2018
KSM

⁴ MANU/SC/7680/2008

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. No. 2588 of 2014

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